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OGC 66-2197

30 September 1966

MEMORANDUM FOR: Inspector General

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ATTENTION: [REDACTED]

SUBJECT: Agency Regulation on Payment of Night Differential

1. This is in response to your memorandum requesting our advice as to the entitlement of certain NPIC employees to receive night pay differential, under certain circumstances. According to your memorandum the night shift at NPIC normally works from 1600 until 0030 hours; however, when large shipments of film arrive, the shift works from 2000 to 0800 hours. When this happens on a weekend, the night shift personnel do not receive night differential pay because they have already worked their basic forty-hour week and the weekend overtime hours are in their own shift, not on a "regularly scheduled" shift. If this happens during the week, night differential is paid only from 2000 to 0400 hours because night shift personnel are considered to be on an overtime basis after 0400 and not in actual "regularly scheduled" tour of duty. You inquire whether these management decisions for the payment of night differential are correct in law.

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2. [REDACTED] provides that night pay differential is payable in conjunction with compensation for overtime when the overtime hours fall between 6 p.m. and 6 a.m. and "within another regularly scheduled tour of duty." The hours involved in the NPIC matter, according to your memorandum, do not fall within "a regularly scheduled tour of duty." Absent an amendment to [REDACTED] therefore, night pay differential would not be proper. The Agency of course has the authority to modify the regulations. In this connection, it may be noted that the regulation appears to be more stringent than the pertinent provision of the statute on the subject, 5 U.S.C. 921.

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[REDACTED]
Office of General Counsel

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cc: NPIC

Office of Finance, [REDACTED]

Office of Personnel

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